IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 609 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIRKHAN @ BABIYA SABIRKHAN

Versus

STATE OF GUJARAT

Appearance:

MS KD PARMAR for Petitioner

MR SAMIR DAVE, APP for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/11/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner, learned A.P.P. and perused the special criminal application and the reply filed by the respondents.

#. The learned counsel for the petitioner does not dispute that on 18.6.99, the checking squad of the prison office had found the petitioner possessing unauthorized things of Rs.50/-, three blade packets, four loose blades, and jail canteen coupon of another prisoner. The jail punishment imposed on petitioner was ten days remission cut, rejection of the ensuing due furlough and change of the work from Tambu division to Panja Carpet. The petitioner prayed for direction to the respondents to release him on his due furlough leave by imposing any other suitable terms and conditions in the facts and circumstances of the present case.

#. In the special criminal application, the petitioner has not challenged the order of the jail authority of punishment given to him, i.e. rejection of ensuing due furlough. When the due furlough has been rejected by way of penalty and which order has not been challenged how far it is open to the petitioner to apply for the same and come before this court with this prayer in the petition. From the order of the respondent dated 24th May 2000, I find that the furlough leave has not been granted on the ground aforesaid to which order no exception can be made. Once the jail punishment is given of rejection of ensuing due furlough, it cannot be claimed by petitioner and rightly it is rejected. Much emphasis has been made by learned counsel for the petitioner on the fact that one another convict, namely, Rupsing Agarsing was also found indulging in the jail offence in the same prison by the squad on the same day but he has been granted furlough. In the reply to the special criminal application, this aspect has been explained. Though I am not satisfied with the explanation given by the respondents in reply, even if it is taken that the order granting furlough leave to Rupsing Agarsinh is ab-initio void, no such relief can be granted on the plea of discrimination to the petitioner. Even if this furlough leave is granted to the person on being punishment given to him of cancellation of due furlough, it has to be given effect to and next furlough, as and when becomes due, may not be given to him. The I.G. Prisons, should have been very careful in such matters. When on 18th June 1999, the checking squad of his office found Rupsing Agarsinh in possession of Rs.350/= as unauthorized thing, then his application for furlough should not have been decided finally till the matter re.: this unauthorized thing's recovery is finally decided. Before this the order has been passed which is not just and reasonable and deserves to be deprecated. It is not the case where the I.G. Prisons would not have been known of the fact that on 18th June,

1999, Rupsing Agarsinh was found possessing unauthorized thing. Till jail punishment matter is decided, no order could have been passed on his application. Be that as it may, only on this ground no relief can be granted to the petitioner in this petition. In the result this special criminal application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)